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BUDGET MAKING AND THE WORK OF GOVERNMENT

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When one consults the writings of the framers of the Constitution there appears to be singularly little on budget making, although it was perceived clearly enough that it involves the whole character of constitutional government. Nothing could be more emphatic than the utterances in *The Federalist* as to the power of the purse. And yet this full recognition of its importance does not seem to have been accompanied by any solicitude as to procedure. Apparently that was regarded as a matter which would take care of itself. All that the Constitution has to say about procedure is that "no money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time." Mention of the subject could hardly have been more vague than that. It seems to have been assumed as a matter of course that the administration would formulate proposals as to ways and means for the consideration of Congress. There is much about taxation in *The Federalist* but it is concerned with showing that there was no occasion for fear lest it should be unfair or burdensome. In No. 36, which is a detailed statement of the possible scope of internal taxation, Hamilton incidentally remarks:

Nations in general, even under governments of the more popular kind, usually commit the administration of their finances to single men or to boards composed of a few individuals, who digest and prepare in the first instance the plans of taxation which are afterwards passed into laws by the authority of the sovereign or legislature.

This observation occurs in a manner that makes it the more significant. He is refuting an objection to the effect that a power of internal taxation could not be exercised with advantage by the national government from want of a sufficient knowledge of local circumstances. An obvious answer might have been to say that the taxes would be laid by the representatives of the people who would naturally have knowledge of local circumstances. But

forthwith he proceeds to admit that in practice the plans would be digested and prepared in advance for the consideration of the legislature, and then he points out that those charged with the duty would doubtless avail themselves of the information possessed by representatives from various localities. He argues that this will suffice to keep those administering the finances duly informed of local conditions, and he then dismisses the point with this appeal to precedent:

Inquisitive and enlightened statesmen are deemed everywhere best qualified to make a judicious selection of the objects proper for revenue; which is a clear indication, as far as the sense of mankind can have weight in the question, of the species of knowledge of local circumstances, requisite to the purposes of taxation.

There can be no doubt that English budget practice was in mind and that it was assumed to be the normal practice, to which American usage would naturally conform without express provision to that effect. No other supposition was likely to occur to the framers of the Constitution. English parliamentary procedure had remained without change since the reign of Charles II and it presented all the appearance of being the settled form that constitutional government would naturally assume wherever established. As a matter of fact parliamentary procedure in England remained without substantial change until the middle of the nineteenth century, but in the United States radical divergence began soon after the national government got under way. Certain features of the Constitution adopted without intending to alter its nature soon effected a profound alteration of type, and tendencies were developed that were in no wise anticipated. The consequences are particularly marked in budget making which in no respect now corresponds to the intentions and expectations of the framers of the constitution.

It is clear from the debates of the constitutional convention and from the explanations of *The Federalist* that the framers anticipated for the House of Representatives a position of authority similar to that of the House of Commons. The risk to be guarded against was then thought to be too great stringency of control by the House tending to starve the government through inadequate appropriations. In *The Federalist* it is argued that the greatest circumspection and propriety of behavior would have to be displayed by the Senate to enable it to maintain its constitutional

position in its relations with the House. Hence it was deemed desirable to fortify the Senate by giving it the express right to propose amendments to revenue bills. The compromises made to conciliate the smaller states tended to aggrandize the Senate in which the states had equal representation, and to this circumstance rather than to the intentions of the federal leaders are due some provisions that have deeply affected the character of the government and have shaped budget procedure in ways that no one foresaw. The subordination of appointments to the approval of the Senate was a feature not contained in the original draft and it entered the Constitution as part of the compromises. This feature of the Constitution has exerted a powerful influence in destroying the proper function of the House of Representatives as an organ of control and making it a scuffle of local agency. The great concentration of authority in the Senate alienated Mason of Virginia who declined to sign the report of the convention, and it was the subject of adverse comment in some of the state conventions when the adoption of the Constitution was pending, but nowhere was there due appreciation of the consequences. It is explained in *The Federalist* that the advisory function of the Senate cannot involve any actual exertion of choice.

Thus while the framers of the Constitution intended to perpetuate the type of government with which they had been familiarized by English history, they admitted changes whose effect was to produce a radical divergence and to initiate organic changes that have yet to run their course. Procedure regarded by the founders of the government as so stereotyped by tradition and precedent as to require no special provision has been abandoned, and its place is taken by makeshift arrangements which exhibit no settled plan or constitutional design, and which change their shape from time to time in accordance with Hamilton's maxim that "the public business must in some way or other, go forward." As every constitutional system centers in the management of the public finances, budget conditions all through our history have been a reflex of the conditions under which the work of the government is carried on. The relation is constant and is plainly discernible when actual practice is considered.

The Constitution makes no particular mention of budget estimates. Administrative function in connection therewith was

included in the duty of the President to "give to the Congress information on the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." There is nothing as to the form in which he shall present his measures or the mode by which he will get them before Congress. It was assumed that the administration would possess the customary initiative existing under the English system. At the outset events followed the traditional course, the various enactments by which the organization of the government was completed being prepared for Congress by the federal leaders. Hamilton was busily occupied in drafting the regulations for the treasury department and digesting his financial plans before his appointment as Secretary of the Treasury. Examination of the details of his arrangements shows that he was influenced throughout by English precedents. Congress also conformed to English precedents. The House of Representatives resolved itself into a Committee of the Whole on Ways and Means in considering revenue measures just as in England. There were no standing committees to intervene between the recommendations of the administration and the action of the House. Any matter on which the House desired information, whether a claim, a petition or a memorial, would be referred directly to the head of the proper department, and reports from the heads of departments supplied the subjects of legislation. The House exercised its functions of criticism and control through the Committee of the Whole. When the sense of the House was ascertained, a select committee would be appointed to prepare the bill, which usually meant that the select committee's work would be done for it by the department interested in procuring the legislation. The original budget procedure is plainly indicated by this record upon the House journal for January 10, 1794:

The House went into Committee of the Whole on the statements and estimates of appropriations for the current year. Resolved, on certain appropriations, and moved that a committee should be appointed to prepare and bring in a bill for that purpose.

The resemblance to English procedure is plain and it should be added that the cabinet officials assumed direct relations with Congress after the manner of an English ministry. In the beginning all the branches of the government were bunched together in their quarters so that intercourse was ready and easy without formal

arrangements, and the brief notices of the direct presence of cabinet officials appearing in the records give an inadequate notion of the real extent of the intimacy. It was by direct, personal administrative initiative that the government was set in operation. Only by such agency could the finances have received the radical treatment by which Hamilton almost at a stroke lifted the nation out of bankruptcy, established its credit and secured its revenues. His plans were marked by a boldness of conception and an unity of design that would stamp them unmistakably as an individual product even if there were not abundant direct evidence of that fact. They surpassed popular comprehension and affronted popular prejudice to an extent that would have made them impracticable in an assembly without other means of action than its own varied impulses. It was because he was in a position to formulate his measures in their entirety and to press them directly upon Congress, unhindered by any committee system with its parcelling of influence, that he was able to carry his measures. Indeed, even then his success was made possible only by adroit management in which he utilized the controversy over the site of the national capital to secure the necessary votes. His personal initiative transcended even the function of an English Chancellor of the Exchequer on which it was distinctly modelled, for he had no compact party following on which he could depend. It is rather comparable to the parliamentary diplomacy of the German Imperial Chancellor, working with discordant factions and piecing together a combination of the requisite strength.

The system broke down as soon as the government became firmly established and new party divisions began to take place. Then the actual divergence of the American system from its English prototype was revealed. There is nothing to indicate that, by the provision prohibiting officeholders from serving as members of Congress, the framers of the Constitution had any idea of striking down the English system of government. The clause adopted a reform that had been much agitated in England and it is commended in *The Federalist* as a safeguard to the independence of Congress. It was not perceived that it would interfere with administrative initiative, nor does it necessarily do so. The Swiss constitution makes a similar provision and administrative initiative is in no wise impaired thereby, but mindful of American experience the framers

of the Swiss constitution conferred upon the cabinet officials the express right of appearing before the Congress with their proposals. This provision has profoundly differentiated the Swiss system from the American system notwithstanding a close resemblance in the general constitutional scheme. By virtue of it, the Swiss administration has developed as the agency by which all legislation is planned and drafted, even the amendments voted by the Congress being entrusted to the care of the administration for incorporation in the text of the bill. By a natural extension of the procedure it has become the practice to publish in advance of the meeting of Congress the text of the government measures that will be proposed for its consideration. The practical effect of the administrative initiative has been to give such precision and definiteness to legislative procedure that the Swiss Congress is able to transact the business of a session in a few weeks. Meanwhile there is never any anxiety as to the possibilities of its action as the system thoroughly matures all measures and appries the public of their exact nature before enactment. But the dependence of the Constitution of the United States on mere tradition and custom as to the mode of administrative recommendation gave an opening to party violence, the consequences of which were soon experienced and have gone on ever since with steadily increasing volume.

An English parliamentary faction, however bitter against a cabinet official, has no way of silencing him. He is a member of the House and has a right to the floor which cannot be denied him. He can confront his enemies, and they cannot avoid the risk that he may confute their arguments and repel their calumnies to their own discomfiture. The constitutional right to the floor of Congress vested in the Swiss heads of administration gives them a like protection. But the constitutional right and duty of the President of the United States to recommend to Congress "such measures as he shall judge necessary and expedient" is neither defined nor protected. Actual procedure has varied from time to time and is still unsettled, but whatever the method that is actually employed, budget making is powerfully affected by it.

Although Hamilton's opponents were never able to defeat him openly, they were able to shut him off from direct access to Congress and terminate the direct initiative originally possessed by the administration; but this was done at the expense of the control

exercised by the House through the Committee of the Whole. To this day there is no Committee of Ways and Means or of Appropriations in the English House of Commons except the whole house sitting in Committee of the Whole to consider taxes and supplies. Our House of Representatives started with the same system but on December 16, 1796, it was resolved that a Committee on Ways and Means should be appointed and on January 7, 1802, it was established as a permanent standing committee. At that time there were only five standing committees but the parcelling of legislative initiative among committees once begun the process went on rapidly and motions to increase the number were made at every session. The effect in impairing the collective weight and dignity of the House was soon manifested. In 1797 Fisher Ames, a Federalist member of Congress, wrote to Hamilton:

The heads of departments are chief clerks. Instead of being the ministry, the organs of the executive power, and imparting a kind of momentum to the operation of the laws, they are precluded even from communicating with the House by reports. In other countries they may speak as well as act. We allow them to do neither The efficiency of government is reduced to a minimum Committees already are the ministers, and while the House indulges a jealousy of encroachment in its functions, which are properly deliberative, it does not perceive that these are impaired and nullified by the monopoly as well as the perversion of information by these committees.

Similar testimony is given by Justice Story. He was a political adherent of Jefferson who in 1811 appointed him an associate justice of the supreme court. His Commentaries were published in 1833, and he was speaking from personal knowledge of conditions in Washington when he wrote:

The heads of departments are, in fact, thus precluded from proposing or vindicating their own measures in the face of the nation in the course of debate, and are compelled to submit them to other men who are either imperfectly acquainted with the measures or are indifferent to their success or failure. Thus that open and public responsibility for measures which properly belongs to the executive in all governments, and especially in a republican government, as its greatest security and strength, is completely done away. The executive is compelled to resort to secret and unseen influences, to private interviews, and private arrangements to accomplish its own appropriate purposes, instead of proposing and sustaining its own duties and measures by a bold and manly appeal to the nation in the face of its representatives.

Story's characterization of the actual government as one of "secret and unseen influences" well describes the system that took

shape during Jefferson's administration. He broke with the practice of direct oral communication between the executive and Congress which Washington's administration had taken over from the English system and substituted a written message. He based his relations with Congress upon the standing committee system. It became party usage to allow the administration to pick the chairmen of important committees, which practically meant that the legislative proposals of the administration instead of going openly into Congress by the front door slipped in secretly by committee backstairs out of the public view. The system avoided administrative responsibility. As Story pointed out, "one consequence of this state of things is that there never can be traced home to the executive any responsibility for the measures which are planned and carried at its suggestion." Nor could responsibility be justly imputed to the executive since it was not free to determine the form and character of the measures promoted, that being a matter which had to be arrived at by arrangement with the House committees in which concessions naturally had to be made as in all diplomatic negotiation. This system of directing legislation by private arrangement between the administration and the standing committees lasted until John Quincy Adams' administration when it broke down completely. Senator Benton of Missouri, although himself a participant in the Jackson movement that caused this rupture, made an observation upon it which shows that the original tradition of administrative initiative still survived. In his *Thirty Years View* he remarked:

The appointment of the majority of the members in all committees, and their chairmen, in both Houses, adverse to the administration, was a regular consequence of the inflamed state of parties, although the proper conducting of the public business would demand for the administration the chairmen of several important committees as enabling it to place its measures fairly before the House.

With this breakdown disappeared from our system all recognition of the legislative initiative of the President as President. Administrative experience is so naturally and inevitably the source of legislative initiative that it cannot in practice be separated from the executive office, but ever since the Jacksonian period it does not inhere in the office but attaches to it through the development of party machinery peculiar to the United States. Nominating conventions, party platforms and all the complex machinery of party discipline and management have been evolved to fill the gap between

the executive and the legislature. The President possesses an actual initiative of masterful authority but he derives it from his position as head of his party and its national leader, and he exercises it through party agency. The connecting link between the executive and Congress is the party caucus.

As the President has no access to Congress for his measures save by the favor of his party associates, it is incumbent upon the party managers to keep their followers in an acquiescent temper. The system of indulgence thus introduced has caused the monstrous development of the pay and perquisites of Congress that makes it by far the most expensive assembly the world has ever known. To the same general cause is due the conversion of Congress into a legislative mill, tens of thousands of proposals being made every session whereas in the British parliament, with the affairs of an empire to control, the number of bills introduced during a session never exceeds a few hundred, and in recent sessions amounts to much less than a hundred. As part of the same train of consequences buncombe speechmaking is substituted for deliberation, the distribution of time for debate being treated as an individual perquisite to be utilized in any way the favored member may choose, irrespective of the subject nominally before the House. An incidental effect is to convert the Congressional Record into an electioneering dump. Executive appointments to office are included among Congressional perquisites and the ability of the President to obtain consideration of the public business is so strictly conditioned upon his surrender of the appointing power that the practice has been systematized and it is regarded as a violation of senatorial prerogative to make an appointment in a state save at the instance of the Senators from that state. This extension of the concurring power of the Senate, coupled with the Senate's ability to make any changes in revenue and appropriation bills it sees fit, has reduced the House to a position of really abject inferiority. There could be no greater contrast than that which exists between its present position and that anticipated for it in *The Federalist*. The constitutional position of the House as an organ of control over the government in behalf of the people has been altogether destroyed. There are numerous committees on expenditures in the various departments of the government provided by the rules of the House but in practice they are merely a part of the Congressional patronage fund, and

exercise no real control or supervision. Their futility in these respects was strikingly revealed in consequence of the Acts of 1870 and 1874, passed through the insistence of Mr. Dawes and Mr. Garfield, requiring all unused appropriations to be covered back into the treasury. It then appeared that unexpended balances had accumulated in the departments to the aggregate amount of \$174,000,000, and in a single bureau there was an unexpended balance of \$36,000,000, the accumulation of a quarter of a century.¹ The conversion of the House from an organ of control into a course of particular agency has caused its part in the government to become more and more that of an instrument for registering party determinations of policy arrived at outside of the House. The deliberative functions of Congress now hardly survive except in the Senate.

All these consequences, which affect every part of the government, are experienced with convergent force in budget procedure. Something in the nature of system existed for many years through the concentration of taxation in the hands of the Committee on Ways and Means. For the first forty years of the government all the appropriations were made in one bill. In 1865 revenue and expenditure were disconnected by the creation of the Committee on Appropriations. In 1880 the Agricultural appropriation bill was turned over to a standing committee. The River and Harbor bill was reported independently of the Committee on Appropriations for many years before 1883 when a standing Committee on Rivers and Harbors was authorized with the power of reporting appropriations of that class. In 1885 special exigencies of party management caused changes that destroyed the last vestiges of budget system. Mr. Randall, who was then chairman of the Committee on Appropriations, was opposed to the tariff policy of the administration. To break down his influence with members, the rules were amended so as to distribute seven of the regular appropriation bills among separate committees. There are now fourteen regular appropriation bills distributed among eight different committees of the House. Seven of these committees have jurisdiction over but one appropriation bill, the other bills remaining in the custody of the Committee

¹ Instructive details are contained in an address by Theodore E. Burton, delivered in the House, March 15, 1904.

on Appropriations. The consequence of the distribution was thus described by Chairman Tawney in 1909:

Each of those committees which has jurisdiction of but one appropriation bill naturally becomes the partisan representative of the department for which it recommends appropriations rather than the representative of the body to which its members belong. . . . When the jurisdiction of the Committee on Appropriations was thus divided, Mr. Randall and Mr. Cannon, then members of that committee, predicted that this division of jurisdiction would cost the people of the United States not less than \$50,000,000 annually. They were not far out of the way, as our experience has proven.

The collapse of all budget system in 1885 had a curious result in developing a method of control that to some extent counteracted congressional incapacity. But the new control was not constitutional but was absolutist. It was maintained through an autocratic power exercised by the Speaker with undisguised baldness. The process was simplicity itself. If he did not wish a bill to be passed he would not recognize any one to move its consideration. It became a regular practice for members to visit the Speaker to explain the purpose for which they desired recognition and get his consent. In addition, through a small Committee on Rules of which he was a member with such colleagues as he chose to appoint, he virtually controlled the time of the House. The Committee on Rules always had the right of way, and at any time it could bring in a special order fixing the time at which any matter should be taken up by the House and also the period to be allotted to its consideration; and nothing else could be considered until action had been taken on the report of the committee. A necessary incident of the method was the handling of patronage and appropriations to maintain party discipline, so the method involved increasing pressure upon the appropriation bills. But when the extravagance reached lengths that might make trouble for the party in the elections, the autocratic power of the Speaker could be exercised to reduce the aggregate by holding up appropriation bills. The bills usually attacked for this purpose were what are known in congressional slang as the pork barrels Public Buildings and Rivers and Harbors. The distribution of district "pork" would be made as usual but when the bill was ready for passage the Speaker would not allow it to be considered, even although petitioned by a majority of the House. The application of party discipline to keep members quiescent under this arbitrary rule was facilitated by the fact that

the privation was general and a member could explain to his district that although he had not been able to land local appropriations no one else had had any better success. The following item from the *Pittsburg Dispatch* of January 24, 1897, illustrates this curious situation which is probably without a parallel in constitutional history:

Congressman Ernest F. Acheson was in Pittsburg yesterday. He said he had been forced to agree with Speaker Reed in refusing to give a place to the Omnibus bill, providing appropriations for seventy public buildings, three of which were to be located in Wilkesbarre, Altoona, and his own town of Washington. Speaker Reed showed that the deficit for the month current was already \$8,107,118, and for the fiscal year \$46,009,514. And thus it was he refused to grant a petition signed by 308 members of the House.

The development of this autocratic power, which was not the work of any on Sepeaker and which went on no matter which party was ascendant, tended to displace the initiative which the President exercised as a party leader. There was a period when the chief seat of authority in the administration was not the presidential office but was a group of undertakers embracing the Speaker and some leading chairmen of committees in both Houses. During this period an extraordinarily naked display of the way in which the appropriations may be used to dictate public policy was made in the House. There was a strong sentiment adverse to the policy which the oligarchy was pursuing in respect of currency legislation but a committee chairman quelled revolt by the blunt announcement:

"I have the report on the Public Buildings bill in my pocket. I am going to keep it there until a satisfactory currency bill is passed."²

This rule of oligarchy was quite dependent upon advantages of position and it excited such antagonism that it was suddenly overthrown by the parliamentary revolution of March 19, 1910. A schism in the party to which the Speaker belonged carried over to the opposition votes enough to defeat him on a point of order. This victory was followed up by the passage of a resolution increasing the membership of the Committee on Rules from five to ten members, no longer to be appointed by the Speaker but elected by the House, and it was expressly provided that the Speaker should not even be a member. This exclusion of the Speaker from his old post of managing director of the House has been since confirmed by

² Congressional Record, May 30, 1908, pp. 7629, 7690 *et seq.*

further changes in the rules. Nominally the House now elects all the committees, but by a rule adopted in the Democratic caucus, January 19, 1911, the actual selection is vested in the Committee on Ways and Means. The practical effect is to make the chairman of that committee the leader of the House and to make the caucus the seat of party direction and management. The Committee on Rules now acts under caucus direction in reporting the special orders under which important legislative business is necessarily transacted. It has been calculated that it would take over sixty years to consider in regular order the bills poured into Congress at every session.³

These changes have invigorated the initiative attaching to the office of the President as the national leader of his party, but he has effective access to the House for his measures only through the party caucus. The task devolving on the party management of keeping the caucus in an acquiescent temper has tended to expand Congressional perquisites and to increase the pressure on the appropriations. In this respect the situation is now worse than in the days of the autocratic rule of the Speaker. It has become a matter of acute anxiety with members who feel their national responsibility. The present chairman of the Appropriations Committee has repeatedly urged without success that the House should return to the former system of control through the concentration of the appropriations in the hands of a single committee.⁴ In a speech delivered in the House, February 6, 1915, he suggested more radical treatment. He said:

When the burdens finally become so great as to be intolerable then the inevitable rising will take place. One thing that is essential to accomplish in this body—and it will be done some day—is to deprive the individual member of Congress of the right to initiate expenditures.

The present situation, with its entire lack of budget system, is admitted by thoughtful Congressmen to be indefensible and some reform is becoming practically inevitable. The beginning of a new system was incited by section 7, of the Sundry Civil Appropriation bill of March 4, 1909, putting upon the President the duty of revising the department estimates so as to coördinate them with the

³ Congressional Record, Vol. 43, No. 17, Jan. 7, 1909, p. 611 *et seq.*

⁴ A comprehensive account of committee conditions is given in the speech of Chairman Fitzgerald, June 24, 1913. Congressional Record, vol. 50, part 3, 63d Congress, first session, p. 2154 *et seq.*

revenues. Under President Taft's administration an executive commission made a thorough study of the subject with a view of devising an exact and comprehensive form of budget statement, but a spirit of antagonism developed in Congress and a clause was inserted in an appropriation bill prohibiting any change in the form in which the estimates are transmitted to Congress. Nevertheless, forms were devised that will be of service whenever Congress moves in the matter. But such is the relation between budget making and the work of government that no change will be sufficient that does not give the administration access to the House as a matter of right and not of favor. So long as the administration is dependent upon any sort of mediation in presenting its budget estimates and legislative proposals to the consideration of Congress, sound and economical management of the public finances is unattainable.